

DEPARTMENT POLICY AND PROCEDURES FOR CITIZEN COMPLAINTS

1085

(No. 50 October 1998)

It shall be the policy of the Department of Forestry and Fire Protection (CAL FIRE) to accept all citizen complaints alleging misconduct on the part of department personnel. Investigations of such complaints shall be conducted according to Section 1085.6. Investigative procedures for peace/public officers are outlined starting with Section 1085.7. Investigative procedures for non-peace/public officer employees are at the discretion of the administrative unit chief. The objectives of such investigations are:

- A. **The protection of the public:** The public has the right to expect efficient, fair and impartial service. Therefore, any alleged misconduct by Department personnel must be thoroughly investigated and properly adjudicated in order to assure the maintenance of these qualities while providing the highest level of service to the public.
- B. **The protection of personnel:** Department employees must be protected against false allegations of misconduct. This is accomplished with a thorough and uniform investigation process.
- C. **The protection of the Department:** The Department maintains public trust and a favorable public attitude and is frequently evaluated and judged by the conduct of individual personnel. It is imperative that the entire organization not be subjected to public censure because of misconduct or the appearance of misconduct by a few of its personnel.

NOTE: The following exhibits pertain to this handbook section:

[LE-95 Citizen Complaint Form](#)

[LE-95A Summary of Citizen Complaint Process](#)

[LE-95B Citizen Complaint Log](#)

[LE-95C Annual Report of Citizens' Complaints](#)

Initial Contact/Investigation Required Letter ([see exhibit](#))

Sample - Complainant Cover Letter ([see exhibit](#))

Misconduct Allegation Letter

Sample - Initial Notification to Employee ([see exhibit](#))

Citizen Complaint -- Witness Statement (form)

Sample - Final Letter to Complainant ([see exhibit](#))

Findings of Misconduct Allegations

Sample - Final Notification of Findings to Employee ([see exhibit](#))

Related Sections of Law ([see exhibit](#))

Sample - Witness Cover Letter ([see exhibit](#))

DEFINITIONS

1085.1

(No. 50 October 1998)

Administrative Unit Chief: The chief officer in charge of an administrative unit. In Sacramento, the director's office; in region office, the region chief; in units, the unit chief; at the CAL FIRE Academy, the Academy administrator.

Complaint Categories:

Category 1:

A complaint that alleges criminal wrongdoing which constitutes a felony violation of law.

Category 2:

A complaint that alleges criminal wrongdoing which constitutes a misdemeanor violation of law.

Category 3:

A complaint that alleges noncriminal wrongdoing including, but not limited to, the violation of any rule, procedure, policy or lawful order of CAL FIRE, or the negligence in the performance of duty.

Citizen Complaint:

A complaint is an allegation of misconduct made by any person against any individual associated with CAL FIRE and described under the definition of personnel. A complaint may be an oral or written expression of misconduct and is filed with the Department.

Confidential Informant:

A person who, by virtue of his/her position in the community or nature of profession, must remain unknown to the general evaluators of an investigation. This person must be well known to the law enforcement segment of the unit or region and must have a proven reliability as to the authenticity of the information or evidence provided. For citizen complaint purposes, information and evidence provided by a confidential informant should be substantiated by other sources of data. Every effort to maintain the informant's confidentiality must be made.

Disposition:

The status assigned to a citizen complaint of misconduct. The status is assigned at the completion of a case by the administrative unit chief responsible for the citizen complaint investigation process. Only the following disposition categories will be used:

- A. Not Sustained, Unfounded: The disposition assigned to a complaint where the allegation is false or not supported by the evidence.
- B. Not Sustained, Inconclusive: The disposition assigned to a complaint where there is insufficient evidence or where there are insufficient facts to prove or disprove the allegation made in the complaint.
- C. Not Sustained, Exonerated: The disposition assigned to a complaint where the alleged act or omission did occur but was lawful and proper.
- D. Sustained: The disposition assigned to a complaint where the investigation disclosed the alleged act or omission did occur and constitutes misconduct.

Finding(s)/Conclusion(s):

Results of the investigation including the observations and conclusions of the investigating officer based on facts brought forth after a fair and impartial investigation.

Internal Affairs Investigator:

The employee assigned by the administrative unit chief to investigate an individual complaint. The investigator should be senior in rank to the person who is the object of the investigation.

This may and usually would be the employee's direct supervisor. However, based on the seriousness of the complaint, the unit administrator may assign or request someone other than the employee's immediate supervisor to conduct the investigation.

Misconduct:

- A. The commission of a criminal offense;
- B. The violation of any rule, procedure, policy or lawful order of the department;
- C. Negligence in the performance of duty.

Person:

- A. A private individual.
- B. An employee of the Department of Forestry and Fire Protection (only for those occurrences or conditions not covered by departmental or employee bargaining agreement grievance procedures).
- C. An employee of any other private or public organization.

Personnel:

All employees of CAL FIRE, either peace officer/public officer or civilian, including volunteers, volunteers in prevention, paid call firefighters, volunteer fire wardens or any other individual associated with CAL FIRE whose action or conduct may bring discredit to the department.

**AVAILABILITY OF COMPLAINT PROCESS
POLICY AND PROCEDURE****1085.2**

(No. 50 October 1998)

In accordance with Penal Code Section 832.5, a written description of the procedure for handling citizen complaints must be made available to the public. Citizens shall therefore be provided, upon request, a copy of LE-95a, Summary of Citizen Complaint Process.

AUTHORITY FOR COMPLAINT INVESTIGATIONS**1085.3**

(No. 50 October 1998)

The Director's office and each region chief, unit chief, and CAL FIRE Academy administrator have the authority and responsibility to investigate citizen complaints against department employees working in their respective administrative units.

The authority for investigation of a citizen complaint lies with the administrative unit chief in which the alleged misconduct occurred. Region chiefs may assign personnel of their choice to investigate any complaint within their respective region.

If a complaint is received alleging misconduct in another administrative unit, it is the responsibility of the chief of the unit receiving the complaint to forward the information to the appropriate authority. If the citizen complaint is against a Departmental peace or public officer, as defined in Section 1085.6, the complaint will be logged in the Citizen Complaint Log (LE-95b) of the unit in which the alleged misconduct occurred. (See Section 1085.8.1)

Investigation of citizen complaints which originate while an employee is in training at the Academy will be the responsibility of the Academy administrator.

ACCEPTANCE OF COMPLAINTS

1085.4

(No. 50 October 1998)

All citizen complaints, whether verbal or written, in-person or by telephone, or where the complainant is known or anonymous shall be documented by members of this Department. Citizens' complaints pertaining to personnel of this Department shall be accepted at any Department facility. Complaints shall be referred to the Department supervisor in charge of the facility. If a supervisor is not available, sufficient information shall be taken to allow the supervisor to follow-up on the complaint at the earliest opportunity.

OFF-DUTY CONDUCT COMPLAINTS

1085.4.1

(No. 50 October 1998)

Citizen complaints arising from an employee's off-duty conduct or actions shall be closely scrutinized by the administrative unit chief. If the allegations meet any of the following criteria the complaint shall be investigated in accordance with Department policy:

1. The employee's alleged actions or conduct involve the Department or the employee interjected the Department into his/her actions or conduct. The fact that the complainant is simply aware that a person is employed by the Department is not sufficient to provide nexus to the Department.
2. The employee's alleged conduct is of an illegal or immoral nature, or constitutes a department policy violation.
3. The employee's alleged actions or conduct have brought discredit to the Department or are of a highly questionable nature.

COMPLAINT PROCEDURE

1085.5

(No. 50 October 1998)

The following procedure will be followed in responding to public complaints:

1. Any citizen requesting information on the citizen complaint process shall be provided an LE-95a which explains the Department's citizen complaint policy.
2. Upon initial receipt of a citizen complaint, whether written or verbal, in person or by telephone, where the complainant is known or anonymous, an LE-95a explaining the citizen complaint policy shall be provided to the complainant if the complainant so desires.

3. All complaints alleging misconduct on the part of a department employee shall require the completion of form LE-95 (Complaint Report). Whenever possible the complainant shall complete the LE-95. Written complaints shall be attached to a completed LE-95. If the written complaint was received in the mail, an attempt to provide the complainant with an LE-95 and an LE-95a should be made.
4. If the complaint is received from an anonymous person, the receiving employee shall inform the complainant of the availability of formal complaint procedures. Additionally, the complainant shall be advised that although the complaint will be investigated, the statement of the anonymous complainant will not be used as evidence under these procedures because the information would constitute hearsay.

The employee receiving an anonymous complaint shall complete an LE-95 as completely as possible. An effort must be made to obtain sufficient information to allow the determination of the charges, since later contact with the complainant will normally be impossible. The employee receiving the complaint shall indicate "anonymous complaint" in the signature block provided for the complainant.

5. If at the time of filing a citizen complaint the complaint can be resolved to the satisfaction of all parties, the resolution shall be noted on the Citizen Complaint Report, LE-95. Although the citizen complaint has been resolved, it may still be reportable as outlined by Penal Code Section 832.5, and must be reported to the administrative unit chief or his/her designee for completion of the Citizen Complaint Log LE-95b, if applicable.
6. All citizen complaints alleging misconduct on the part of a department employee will be referred directly to the administrative unit chief or his/her appointed designee.

DETERMINATION OF EMPLOYEE PEACE/PUBLIC OFFICER STATUS

1085.6

(No. 50 October 1998)

Upon receiving a citizen's complaint, the administrative unit chief shall determine the peace/public officer versus non-peace/public officer status of the employee(s) named in the complaint.

For each employee found to be designated as a peace or public officer for the California Department of Forestry and Fire Protection, under Penal Code Sections 830.2, 830.3, 830.37, 830.6, and/or 830.7, the procedures outlined in this handbook starting with Section 1085.7 shall be followed.

For complaints against non-peace/public officer designated employees, the procedures outlined in this handbook starting with Section 1085.7 are recommended, but not required. The administrative unit chief may modify the procedures to meet local needs. If the procedures are incorporated for a non-peace/public officer designated employee, the recording and reporting requirements of 1085.8.1 must not be included to avoid misreporting of annual citizen's complaints to the Department of Justice.

PROCEDURES FOR COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS

1085.7

(No. 50 October 1998)

This procedure for the investigation of citizen complaints complies with the requirements set forth in Section 832.5 of the California Penal Code. This section states:

"(a) Each department or agency in this state which employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of such departments or agencies, and shall make a written description of the procedure available to the public."

"(b) Complaints and any reports or findings relating thereto shall be retained for a period of at least five years."

RETENTION OF COMPLAINTS AND INVESTIGATIONS

1085.8

(No. 50 October 1998)

All records of citizen complaints and related investigation documents shall be retained at the originating administrative unit for no less than 5 years.

Records and files that are subject to civil litigation or criminal proceedings shall be retained until the final adjudication of the matter.

RESPONSIBILITY TO MAINTAIN RECORDS

1085.8.1

(No. 50 October 1998)

A separate Citizen Complaint Log (LE-95b) will be established at the Director's office, at each region office, unit headquarters and the CAL FIRE Academy. The Director, region chiefs, unit chiefs, and Academy administrator are responsible for logs being properly maintained and confidentially secure.

Each administrative unit chief or their designee shall submit, through their appropriate channels, to the Director's office by January 15 of each year a compiled report of citizen complaints for the previous calendar year. The Director's office will forward these reports to the Deputy Chief - Law Enforcement for final compilation and submission to the Department of Justice.

The Deputy Chief - Law Enforcement will submit an annual report to the Department of Justice as outlined in Penal Code Section 13012.

CUSTODIAN OF RECORDS

1085.8.2

(No. 50 October 1998)

The Director's office, each region, unit, and the CAL FIRE Academy shall maintain separate personnel complaint investigation files. These files shall be under the care and custodianship of the Director or his/her designee, region chiefs or their designee, unit chiefs or their designee and the CAL FIRE Academy administrator or his/her designee.

Records and files are to be retained by the originating investigating unit and are not to be forwarded to another administrative unit when an employee who was the subject of the investigation transfers or promotes.

CONFIDENTIALITY OF INVESTIGATIONS

1085.8.3

(No. 50 October 1998)

All personnel complaint investigations are confidential in accordance with Penal Code Section 832.7, and are discoverable only pursuant to Evidence Code Sections 1043 and 1046. All motions for discovery and issues regarding discovery of records covered by Penal Code Section 832.7 shall be forwarded to the deputy chief of Law Enforcement for appropriate action.

Departmental Employees:

Complaint investigations shall not be released to any Department employees except for those employees involved in the administration of the complaint process or those employees who are assigned to investigate the complaint. The release of investigations to departmental employees who are the subject of the investigation shall only be done when coordinated with the regional chief, or the deputy chief of law enforcement when the investigation involves Sacramento Headquarters staff.

Personnel Files:

Complaint investigations are not considered part of or to be included in an employees' personnel file. Investigative documents pertaining to complaints of misconduct will not be placed into employees' personnel file. Information documenting adverse actions that were taken as a result of an investigation of a citizen complaint that was found to be "sustained" and the appropriate findings/conclusions of the investigation will be placed in the affected employee's personnel file in accordance with appropriate adverse action policies.

TIMELY COMPLETION OF INVESTIGATION

1085.8.4

(No. 50 October 1998)

Citizen complaint investigations shall be completed within 30 calendar days of the acceptance of the complaint. With appropriate showing of cause, the administrative unit chief may extend the investigation deadline not to exceed an additional 30 days.

PROCEDURES FOR COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS

1085.9

(No. 50 October 1998)

- A. After meeting the requirements of Sections 1085 through 1085.6 and determining the employee is designated a peace or public officer the administrative unit chief or his/her designee shall record the complaint on the Citizen Complaint log, LE-95b. The administrative unit chief will notify their respective supervisor and the deputy chief of Law Enforcement of the complaint prior to the end of the next scheduled working day.
- B. Specific instructions for completion of the Citizen Complaint Log are as follows:
 - 1. **Citizen Complaint Number:** This number consists of: 2 digits indicating the year; 3 alpha characters indicating the administrative unit; and 3 digits of consecutive sequence numbering the complaint. (i.e. 90-FKU-156)
 - 2. **Date/Time Received:** Enter the date and time the complaint was initially received.
 - 3. **Person Accepting Complaint:** Enter the person's name who initially accepted the complaint.
 - 4. **Employee Information:** If known, enter the name and rank of the employee implicated in the complaint.
 - 5. **Complaint Category:** Check the appropriate category of complaint.

6. **Disposition:** Upon completion of the investigation, indicate the appropriate disposition (see 1085.1 DEFINITIONS - Disposition).
 7. **Remarks:** To be used at the discretion of the administrative unit chief.
- C. When, during the course of the citizen complaint investigation, evidence of additional unrelated allegations of misconduct are discovered, they can be addressed as part of the initial complaint investigation. If the additional allegations of misconduct are of a more severe nature and would complicate the original investigation, the new allegations of misconduct may be resolved with a separate and independent investigation.
- D. Each complaint will be classified according to the following categories. The complaint categories are arranged to match the reporting procedures outlined by Penal Code Section 13012(d).
1. **Category 1:** A complaint that alleges criminal wrongdoing which constitutes a felony violation of law.
 2. **Category 2:** A complaint that alleges criminal wrongdoing which constitutes a misdemeanor violation of law.
 3. **Category 3:** A complaint that alleged non-criminal wrongdoing including but not limited to the violation of any rule, procedure, policy or lawful order of the Department, or the negligence in the performance of duty.
- If the citizen complaint alleges several acts of misconduct which are attributed to one event, the citizen complaint shall be classified according to the most serious allegation.
- E. The administrative unit chief or his/her appointed designee shall review the complaint and assign appropriate personnel to investigate the allegation of misconduct.

INTERNAL AFFAIRS INVESTIGATORS

1085.10

(No. 50 October 1998)

Internal affairs investigators are charged with determining the validity of the complaint, establishing facts, and are equally interested in establishing innocence as well as guilt.

To successfully complete an unbiased investigation, internal affairs investigators are required to abide by all laws, policies and procedures as they apply to employee rights and rules of evidence. Internal affairs investigators are authorized to interview any employee and obtain written statements and gain access to other relevant information in regard to an ongoing investigation.

Internal affairs investigators clearly have the responsibility and authority to conduct thorough and impartial investigations of any of the following matters, and to make appropriate reports:

- A. Any allegation or complaint of misconduct made by any person against the Department or any of its personnel.
- B. All allegations of excessive force, all cases having an apparent potential for civil litigation (excluding minor traffic accidents), all questions of moral turpitude, and other investigations as directed by the administrative unit chief.

CITIZEN COMPLAINT INVESTIGATION REPORT

1085.11

(No. 50 October 1998)

Upon completion of the investigation, the internal affairs investigator will prepare a complete written report in the Department's case report writing format. Based on the type of complaint, this may be either the normal Case Reporting Writing Format or the EEO Investigation Format. The completed report shall be delivered to the administrative unit chief responsible for the investigation. The completed investigation report is to include but not is limited to:

- A. The original complaint and all subsequent statements of the reporting party.
- B. Statements of all witnesses.
- C. Descriptions and analysis of all evidence.
- D. Statements of all involved personnel and witnesses.
- E. All other related reports.
- F. Statement of facts as determined by the internal affairs investigator(s).
- G. Findings, Opinions and Conclusions. The investigator shall state his opinions and conclusions and the reason for the findings in connection with each allegation investigated.

CLOSING COMPLETED INVESTIGATIONS: EMPLOYEE NOTIFICATION

1085.12

(No. 50 October 1998)

The administrative unit chief shall ensure that all completed citizen complaint investigations are discussed with the employee subject to the complaint. The employee shall be afforded all rights as designated in the Government Code and the Peace Officer Procedural Bill of Rights in regards to reviewing the complaint or the final report. If the name or other reference to a confidential informant, or data classified by the Information Practices Act as personal or confidential is included in the completed report, that information will not be disclosed.

After reviewing the complaint investigation with the employee, the administrative unit chief shall provide the employee with a written closing notification. The closing notification will list each allegation, the finding, and disposition. The employee shall be furnished a copy of the closing notification. If the disposition of any allegation addressed by the investigation is "sustained," the administrative unit chief shall ensure that the written closing notification includes the reason the allegation was sustained and appropriate corrective action.

If the disposition of any allegation addressed by the investigation is "sustained," the written closing notification will also contain an advisement informing the employee that a copy of the closing notification will be placed in his or her personnel file, and of the employee's right to respond in accordance with Government Code Section 3306 and Government Code Section 19574. The employee shall be requested to sign the closing notification. Should the employee refuse to sign the notification, it should be noted on the correspondence and signed by a supervisor and a witness.

If "sustained" allegations warrant adverse action against an employee, the written closing notification shall indicate that an adverse action is being processed. Proper procedures for handling adverse actions as outlined in Personnel Handbook [Section 1090](#) shall be followed.

If "sustained" allegations warrant a criminal complaint, all appropriate constitutional protections will be afforded to the employee.

Corrective action may be in the form of employee counseling, written directive, or adverse action. In addition, the correspondence shall include any suggested methods for the proper handling of similar situations in the future.

CLOSING INVESTIGATIONS: COMPLAINANT NOTIFICATION

1085.13

(No. 50 October 1998)

When a citizen complaint investigation is completed, the administrative unit chief shall notify the complainant that the investigation is completed. In some instances where the administrative unit chief feels contact with the complainant would not be in the best interest of the State, contact is at the discretion of the administrative unit chief. In those instances where the complainant is not contacted, the administrative unit chief shall place a memo in the complaint investigation file explaining why contact was not made. The closing notification to the complainant shall include the following:

1. A brief paragraph discussing each of the complainant's specific allegations.
2. Advise the complainant that an internal investigation was conducted. State that the findings of the investigation cannot be released by legal statute.

EXECUTIVE RESPONSE

1085.14

(No. 50 October 1998)

In those instances where protocol mandates the complainant be contacted by the Director, Agency Secretary, Legislator, or Governor, the Director's office shall prepare the final reply. The administrative unit chief responsible for the completed investigation shall coordinate the handling of the reply with the Director's office.

PROCEDURE FOR ANNUAL REPORT OF CITIZEN COMPLAINTS AGAINST PEACE/PUBLIC OFFICERS

1085.15

(No. 50 October 1998)

The Department is required to make an annual report to the California Department of Justice on the number and type of citizen complaints received.

Each administrative unit chief or their designee shall submit, through their appropriate channels, to the Director's office by January 15 of each year a compiled report of citizen complaints for the previous calendar year. The Director's office will forward these reports to the Deputy Chief - Law Enforcement for final compilation and submission to the Department of Justice.

The report shall be completed and submitted according to instructions on Department form LE-95c, Annual Report of Citizen Complaints.

[\(see next section\)](#)

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[\(see Forms or Forms Samples\)](#)